

1 AN ACT to create the Assistive Technology Protection Act.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the  
5 Assistive Technology Warranty Act.

6 Section 5. Definitions. In this Act:

7 "Assistive technology device" means any item, piece of  
8 equipment, or product system, whether acquired commercially,  
9 modified, or customized, that is purchased or leased, or whose  
10 transfer is accepted in this State, and that is used to  
11 increase, maintain, or improve functional capabilities of  
12 individuals with disabilities. "Assistive technology device"  
13 does not mean any medical device, surgical device, or organ  
14 implanted or transplanted into or attached directly to an  
15 individual. "Assistive technology device" also does not  
16 include any device for which a certificate of title is issued  
17 by the Secretary of State, Division of Motor Vehicles, but does  
18 mean any item, piece of equipment, or product system otherwise  
19 meeting the definition of "assistive technology device" that is  
20 incorporated, attached, or included as a modification in or to  
21 such certificated device.

22 "Assistive technology device dealer" means a person who is  
23 in the business of selling assistive technology devices.

24 "Assistive technology device lessor" means a person who  
25 leases assistive technology devices to consumers, or who holds  
26 the lessor's rights, under a written lease.

27 "Collateral cost" means expenses incurred by a consumer in  
28 connection with the repair of a nonconformity, including the  
29 cost of shipping, sales tax, and the cost of obtaining an  
30 alternative assistive technology device.

31 "Consumer" means any one of the following:

32 (1) A purchaser of an assistive technology device, if

1 the assistive technology device was purchased from an  
2 assistive technology device dealer or manufacturer for  
3 purposes other than resale.

4 (2) A person to whom an assistive technology device is  
5 transferred for purposes other than resale, if the transfer  
6 occurs before the expiration of an express warranty  
7 applicable to the assistive technology device.

8 (3) A person who may enforce a warranty applicable to  
9 an assistive technology device.

10 (4) A person who leases an assistive technology device  
11 from an assistive technology device lessor under a written  
12 lease.

13 "Consumer" does not include a person who acquires an  
14 assistive technology device at no charge through a donation, or  
15 a public school district or special education joint agreement  
16 established under the Illinois School Code that purchases or  
17 leases an assistive technology device for the use of a student  
18 with a disability for the purpose of implementing the  
19 Individualized Educational Plan of the student.

20 "Demonstrator" means an assistive technology device used  
21 primarily for the purpose of demonstration to the public.

22 "Early termination cost" means any expense or obligation  
23 that an assistive technology device lessor incurs as a result  
24 of both the termination of a written lease before the  
25 termination date set forth in the lease and the return of an  
26 assistive technology device to the manufacturer, including a  
27 penalty for prepayment under a financing arrangement.

28 "Early termination savings" means any expense or  
29 obligation that an assistive technology device lessor avoids as  
30 a result of both the termination date set forth in the lease  
31 and the return of an assistive technology device to a  
32 manufacturer, including an interest charge that the assistive  
33 technology device lessor would have paid to finance the  
34 assistive technology device or, if the assistive technology  
35 device lessor does not finance the assistive technology device,  
36 the difference between the total payments remaining for the

1 period of the lease term remaining after the early termination  
2 and the present value of those remaining payments at the date  
3 of the early termination.

4 "Loaner" means an assistive technology device provided  
5 free of charge to a consumer, for use by the consumer, that  
6 need not be new or identical to, or have functional  
7 capabilities equal to or greater than, those of the original  
8 assistive technology device, but that meets all of the  
9 following conditions:

10 (1) It is in good working order.

11 (2) It performs, at a minimum, the most essential  
12 functions of the original assistive technology device in  
13 light of the disabilities of the consumer.

14 (3) There is no threat to the health or safety of the  
15 consumer due to any differences between the loaner and the  
16 original assistive technology device.

17 "Manufacturer" means a person who manufactures or  
18 assembles assistive technology devices and (i) any agent of  
19 that person, including an importer, distributor, factory  
20 branch, or distributor branch, and (ii) any warrantor of an  
21 assistive technology device. The term does not include an  
22 assistive technology device dealer or assistive technology  
23 device lessor.

24 "Nonconformity" means any defect, malfunction, or  
25 condition that substantially impairs the use, value, or safety  
26 of an assistive technology device or any of its component  
27 parts, but does not include a condition, defect, or malfunction  
28 that is the result of abuse, neglect, or unauthorized  
29 modification or alteration of the assistive technology device  
30 by the consumer.

31 "Reasonable attempt to repair" means any of the following  
32 occurring within the term of an express warranty applicable to  
33 a new assistive technology device or within one year after the  
34 first delivery of the assistive technology device to a  
35 consumer, whichever is sooner:

36 (1) The manufacturer, the assistive technology device

1 lessor, or any of the manufacturer's authorized assistive  
2 technology device dealers accept return of the new  
3 assistive technology device for repair at least 2 times.

4 (2) The manufacturer, the assistive technology device  
5 lessor, or any of the manufacturer's authorized assistive  
6 technology device dealers place the assistive technology  
7 device out of service for an aggregate of at least 30  
8 cumulative days because of nonconformities covered by a  
9 warranty that applies to the device.

10 Section 10. Express warranty. A manufacturer or assistive  
11 technology device lessor who sells or leases an assistive  
12 technology device to a consumer, either directly or through an  
13 assistive technology device dealer, must furnish the consumer  
14 with an express warranty for the assistive technology device  
15 warranting that the device is free of any nonconformity. The  
16 duration of the express warranty must be not less than one year  
17 after the date of the initial delivery of the assistive  
18 technology device to the consumer. If the manufacturer fails to  
19 furnish an express warranty as required by this Section, the  
20 manufacturer shall be deemed to have warranted to the consumer  
21 of an assistive technology device that, for a period of one  
22 year after the date of the initial delivery to the consumer,  
23 the assistive technology device will be free from any condition  
24 or defect that substantially impairs the value of the assistive  
25 technology device to the consumer. The express warranty takes  
26 effect on the date the consumer initially takes possession of  
27 the new assistive technology device.

28 Section 15. Assistive technology device replacement or  
29 refund.

30 (a) If a new assistive technology device does not conform  
31 to an applicable express warranty and the consumer (i) reports  
32 the nonconformity to the manufacturer, the assistive  
33 technology device lessor, or any of the manufacturer's  
34 authorized assistive technology device dealers and (ii) makes

1 the assistive technology device available for repair before one  
2 year after the first delivery of the device to the consumer or  
3 within the period of the express warranty if the express  
4 warranty is longer than one year, then a reasonable attempt to  
5 repair the nonconformity must be made at no charge to the  
6 consumer.

7 (b) If, after a reasonable attempt to repair, the  
8 nonconformity is not repaired, the manufacturer must carry out  
9 the requirements of either item (1) or item (2) of this  
10 subsection at the option of the consumer:

11 (1) The manufacturer shall provide a refund to the  
12 consumer within 30 days after the request by the consumer.  
13 If the consumer chooses this option, he or she shall return  
14 the device having a nonconformity to the manufacturer or  
15 lessor along with any endorsements necessary to transfer  
16 legal possession to the manufacturer or lessor.

17 If the assistive technology device was purchased by  
18 the consumer, the manufacturer shall accept return of the  
19 assistive technology device and refund to the consumer, and  
20 to any holder of a perfected security interest in the  
21 assistive technology device as the holder's interest may  
22 appear, the full purchase price plus any finance charge  
23 paid by the consumer at the point of sale and collateral  
24 costs, less a reasonable allowance for use.

25 If the assistive technology device was leased by the  
26 consumer, the manufacturer shall accept return of the  
27 device, refund to the assistive technology lessor and to  
28 any holder of a perfected security interest in the device,  
29 as the holder's interest may appear, the current value of  
30 the written lease, and refund to the consumer the amount  
31 that the consumer paid under the written lease plus any  
32 collateral costs, less a reasonable allowance for use. The  
33 manufacturer shall have a cause of action against the  
34 dealer or lessor for reimbursement of any amount that the  
35 manufacturer pays to a consumer which exceeds the net price  
36 received by the manufacturer for the assistive technology

1 device.

2 (2) The manufacturer shall provide a comparable new  
3 assistive technology device. The consumer shall offer to  
4 transfer possession of the device having a nonconformity to  
5 the manufacturer. No later than 30 days after that offer,  
6 the manufacturer shall provide the consumer with the  
7 comparable new assistive device. Upon receipt of the  
8 comparable new assistive device, the consumer shall return  
9 the device having the nonconformity to the manufacturer,  
10 along with any endorsements necessary to transfer legal  
11 possession to the manufacturer.

12 (c) For purposes of this Section, "current value of the  
13 written lease" means the total amount for which that lease  
14 obligates the consumer during the period of the lease remaining  
15 after its early termination, plus the assistive device lessor's  
16 early termination costs and the value of the assistive device  
17 at the lease expiration date if the lease sets forth that  
18 value, less the assistive device lessor's early termination  
19 savings.

20 (d) For purposes of this Section, a "reasonable allowance  
21 for use" may not exceed the amount obtained by multiplying the  
22 total amount for which the written lease obligates the consumer  
23 by a fraction, the denominator of which is 1,825 and the  
24 numerator of which is the number of days that the consumer used  
25 the assistive device before first reporting the nonconformity  
26 to the manufacturer, assistive device lessor, or assistive  
27 device dealer.

28 Section 20. Prohibition on enforcement of lease. A person  
29 may not enforce an assistive technology device lease against a  
30 consumer after the consumer receives a refund under Section 15.

31 Section 25. Restriction on resale or lease; full  
32 disclosure. An assistive technology device returned by a  
33 consumer or assistive technology device lessor in this State,  
34 or by a consumer or assistive technology device lessor in

1 another state under a similar law of that state, may not be  
2 sold or leased again in this State unless full disclosure of  
3 the reasons for the return is made to any prospective buyer or  
4 lessee of the device.

5 Section 30. Waiver of rights void. Any waiver by a consumer  
6 of his or her rights under this Act is void.

7 Section 35. Civil remedies. In addition to pursuing any  
8 other remedy, a consumer may bring an action to recover any  
9 damages caused by a violation of this Act. The court shall  
10 award a consumer who prevails in such an action no more than  
11 twice the amount of any pecuniary loss, costs, disbursements,  
12 and reasonable attorney's fees, and any equitable relief that  
13 the court deems appropriate.